

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN MARTINEZ,

1:05-cv-00077-AWI-DLB-P

Plaintiff,

**ORDER ADOPTING FINDINGS AND  
RECOMMENDATIONS** (Doc. 39)

vs.

VASQUEZ, et al.,

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTIONS TO  
DISMISS** (Docs. 25 & 32)

Defendants.

Plaintiff, John Martinez ("plaintiff"), a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On June 23, 2006, the Magistrate Judge filed [Findings and Recommendations](#) herein that recommended Defendants' motion to dismiss be granted in part and denied in part. The Findings and Recommendations were served on the parties and contained notice that the parties could file objections. To date, plaintiff has not filed objections to the Magistrate Judge's Findings and Recommendations.

1 In accordance with the provisions of 28 U.S.C.  
2 § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a  
3 de novo review of this case. Having carefully reviewed the  
4 entire file, the Court finds the Findings and Recommendations to  
5 be supported by the record and by proper analysis.

6 Accordingly, IT IS HEREBY ORDERED that:

7 1. The Findings and Recommendations, filed June 23, 2006,  
8 are ADOPTED IN FULL;

9 2. Defendants Cano, Ortiz, Vasquez, and Terle's motion to  
10 dismiss, filed October 7, 2005, and defendant Surges' motion to  
11 dismiss, filed November 2, 2005, are GRANTED IN PART and DENIED  
12 IN PART as follows:

13 a. Defendants' motion to dismiss plaintiff's claims  
14 for lack of standing is DENIED;

15 b. Defendants' motion to dismiss plaintiff's claims  
16 against them for failure to state a claim is GRANTED; and,

17 c. This SHALL action proceed against defendant  
18 Scribner.

19  
20 IT IS SO ORDERED.

21 **Dated: September 16, 2006**  
22 0m8i78

**/s/ Anthony W. Ishii**  
UNITED STATES DISTRICT JUDGE